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*Attorneys for Plaintiffs Capana Swiss Advisors AG and
AmeriMark Automotive AG, and Third-Party Defendants
Shaen Bernhardt, Martin Fasser Heeg, and Stefan Kammerlander*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CAPANA SWISS ADVISORS AG, a Swiss
corporation; AMERIMARK AUTOMOTIVE
AG, a Swiss corporation,

Plaintiffs,

v.

RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
individual; JOHN KIRKLAND, an individual;
and VICKY SMALL, an individual,

Defendants.

**DECLARATION OF SARAH E.
DIAMOND IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
DISQUALIFY COUNSEL [ECF 211]**

Civil Case No. 2:23-cv-00467
Judge: Hon. Ted Stewart
Magistrate Judge: Hon. Cecilia M. Romero

DECLARATION OF SARAH E. DIAMOND

I, Sarah E. Diamond, declare as follows:

1. I am an attorney in the law firm of Venable, LLP, and I am admitted *pro hac vice* in this Court. I am among the counsel of record for Plaintiffs Capana Swiss Advisors, AG (“Capana”), and AmeriMark Automotive AG (“Automotive”), and Third-Party Defendants Shaen Bernhardt, Martin Fasser Heeg, Stefan Kammerlander, and AmeriMark Group AG (“AM Group”) (collectively, “Plaintiffs”) in the above-referenced litigation. This declaration is submitted in support of Plaintiffs’ Opposition to Defendants’ Motion to Disqualify Counsel. I have personal knowledge of the facts set forth in this declaration. If called upon to testify, I could and would testify competently to the truth of the matters stated herein.

2. Attached hereto as **Exhibit 1** is a true and correct copy of relevant excerpts from the transcript of Nicholas Markosian’s August 8, 2024 deposition.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the Share Exchange Agreement signed by Markosian and scanned from his office printer, bates numbered RYMARK071390-71407, marked as Exhibit 38 at the August 8, 2024 deposition of Nicholas Markosian.

4. Attached hereto as **Exhibit 3** is a true and correct copy of the September 16, 2020, letter sent by Chad Pehrson on behalf of Markosian Auto, Mr. Kirkland, and Mr. Hesterman, bates numbered PL_0000000585, marked as Exhibit 73 at the August 8, 2024 deposition of Nicholas Markosian.

5. Attached hereto as **Exhibit 4** is a true and correct copy of relevant excerpts from the October 22, 2024 deposition transcript of Brett Breedlove of Katz, Sapper & Miller.

6. Neither Venable nor Parsons Behle & Latimer represent Philomaxcap AG in any capacity.

7. Attached hereto as **Exhibit 5** is a true and correct copy of DHL tracking information received by Venable from Whitetree Capital showing that Defendants' counsel, Chad Pehrson, received documents from Whitetree Capital on December 19, 2024 (the "Whitetree Production.")

8. Attached hereto as **Exhibit 6** is true and correct copy of relevant documents from the Whitetree Production, bates stamped WHITETREE000026, 29-46.

9. Attached hereto as **Exhibit 7** is a true and correct copy of a series of emails from Rymark's controller, Vicky Small, to Nicholas Markosian and others, bates numbered Hesterman0001196-1196_05.

10. Attached hereto as **Exhibit 8** are true and correct copies of declarations from Automotive, AM Group, and Mr. Heeg.

11. Attached hereto as **Exhibit 9** is a true and correct copy of a May 6, 2016 email from Markosian to Daniel Gysi and Miron Leshem, bates numbered PL_0000003300, marked as Exhibit 33 at the August 8, 2024 deposition of Nicholas Markosian.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 16th day of January, 2025.

/s/ Sarah Diamond
Sarah Diamond

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2025, I filed the foregoing with the Clerk of Court using the Court's CM/ECF filing system and which sent electronic notification of the filing to counsel of record in this matter.

/s/ Hannah Ector
Hannah Ector